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BILL ANALYSIS

BILL NUMBER: House Bill 5292 (Committee Substitute)
TOPIC: Property and Casualty Guaranty Association
SPONSOR: Representative Leslie Mortimer
CO-SPONSORS: Representatives Gaffney and Hune
COMMITTEE: House Committee on Insurance
Analysis Done: November 1, 2005

POSITION

The Office of Financial and Insurance Services supports this legislation.

PROBLEM/BACKGROUND

The National Association of Insurance Commissioners (NAIC) and the National Conference of Insurance Guaranty Funds (NCIGF) have been working to identify problems raised by recent large insolvencies in the property and casualty insurance industry. As a result of their research, the parties involved with Michigan's Chapter 79 and 81 have determined some changes need to be made to the Insurance Code to solve some of the problems brought to light by these groups.

OFIS and interested parties from the Michigan Property and Casualty Guaranty Association (MPCGA) have been working over the past year to rewrite Michigan's Insurance code to solve some of those problems.

DESCRIPTION OF BILL

Section 7918(4) is added to give the Guaranty Fund the absolute right to obtain custody and control of all claims information of an insolvent insurer. If the fund must sue to gain custody of the claims information and prevails in court, the courts will award cost, expenses, and reasonable attorney fees to the fund. On occasion the insurance company will delegate a third party administrator (TPA) to pay its claims. If the guaranty fund has difficulty obtaining the claims records, as has occurred in the past, the claims paying process is extended to the detriment of those with filed claims. This new language allows the fund to gain more immediate access to the TPA records.

Section 7921(a) is amended to revise the date on which the liquidation order is considered final to the date on which all appeals of the finding of insolvency are exhausted, or if not appealed, the date the order was issued. This language sets the date the guaranty fund becomes liable for claims payment and recognizes the fact that the liquidation procedure is subject to due process. The liquidation can be appealed and if the insurer wins the appeal, no liability would exist for the guaranty fund.

Section 7925(2)(a) is amended to provide that a refund of unearned premium in an amount less than \$50.00 will not be made. The cost of processing a refund of unearned premium for an amount less than \$50.00 would be greater than the actual refund.

The definition of a covered claim in section 7925(3) is revised to exclude any amount due any insurer, insurance pool, underwriting association, health maintenance organization, health care corporation, or self-insurer as subrogation recoveries, contribution, or other obligation. Section 7925(4) defines covered claims as not including obligations for any first party or third party claim by or against an insured whose net worth exceeds \$25,000,000.00. Section 7925(6) defines covered claims as not including a claim for personal protection insurance benefits under Section 3107 that is in excess of \$5,000,000.00. It requires the claim cap in effect at the time of payment of the claim to be the applicable cap. This section recognizes that the guarantee fund is the payer of last resort, if other entities can pay claims they will. It lowers the amount of the claims payments from the guaranty fund, thus lowering their assessment to member companies.

The definitions for "consumer price index," "control," "health care corporation," and "self-insurer" are added to section 7925.

Section 7931(3) is revised to address the issue of claims against the fund from self-insured entities, creating a clear understanding of how claims from a self-insured will be handled. This section allows the guaranty fund to take a credit for benefits provided to a claimant under a self-insured plan, an issue that has caused problems in the past.

An amendment to section 7945 clarifies that Administrative Tribunals are included in any actions that may take place under the proceedings, such as a stay of proceedings.

Under section 8111(2), representatives of any guarantee fund have been added to the list of "third parties" that the commissioner may advise of the existence of a supervision order. This provision serves to guarantee that important information regarding an insolvent insurer will be relayed to the guaranty fund that may become obligated as a result of the insolvency.

Section 8124(4) removes the guaranty fund's standing to appear in a court proceeding concerning the liquidation of an insurer. However Section 8124A restores the standing and allows the fund to intervene as a party as a matter of right and to participate in any court proceeding concerning the rehabilitation or liquidation of an insurer if the fund is or may become liable to act.

Section 8133A provides that any collateral held by the insurer or receiver in order to secure the obligations of a policyholder under a large deductible agreement not be considered an asset of the estate and will be administered by the receiver, as per the requirements of this section. This language gives guaranty funds the same rights and benefits that the insolvent insurer would have received under the large deductible arrangements. The legislation will resolve disputes that have arisen between property and casualty guaranty funds and the receivers of large commercial insurers.

Changes are being made to section 8134 to strengthen early access provisions, permitting available assets of an insolvent insurer to be promptly distributed to guaranty funds for the payment of covered claims. The language clarifies the rights and responsibilities of the liquidator of an insolvent insurer and the affected guaranty funds. These changes are summarized as follows:

- Section 8134(1) requires the liquidator to apply to the court for approval of a proposal to make early access disbursements to a guaranty fund having obligations because of the insolvency. This action must be taken within 120 days of the final determination of insolvency or the guaranty fund may file the application with the court.
- Section 8134(2) provides that when a reserve for uncovered claims under section 8142(2) is appropriate, the amount of estate assets to be reserved for those claims will be a percentage of the uncovered claims under section 8142(2).
- Language is added to section 8134(6) to restrict the liquidator from offsetting the amount to be disbursed to a guaranty fund by any special or statutory deposit or any other asset of the insolvent insurer, except for payment made to satisfy the fund's claims. It also requires that if a guaranty fund subsequently receives a special or statutory deposit, the liquidator can request the return of the early access funds.

SUMMARY OF ARGUMENTS

Pro

The proposed legislation solves many of the problems identified by both the NCIGF and the MPCGA. Current statutes have been revised to give the guaranty funds more access to information concerning claims of liquidated companies, clearly defines what should not be a covered claim during a liquidation proceeding, addresses the issue of self-insured claims against the fund, clarifies procedures when large deductible plans are involved, and gives the funds more rights to be heard when the liquidation proceedings are in court.

OFIS has resolved all remaining concerns with the language of the bill and supports the committee substitute.

Con

OFIS is unaware of any opposition to this legislation.

FISCAL/ECONOMIC IMPACT

OFIS has identified the following revenue or budgetary implications in the bill as follows:

(a) To the Office of Financial and Insurance Services: None known

Budgetary:
Revenue:
Comments:

(b) To the Department of Labor and Economic Growth: None

Budgetary:
Revenue:
Comments:

(c) To the State of Michigan: None

Budgetary:
Revenue:
Comments:

(d) To Local Governments within this State: None

Comments:

OTHER STATE DEPARTMENTS

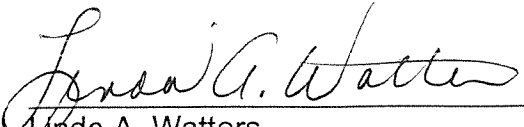
None known

ANY OTHER PERTINENT INFORMATION

The language in this proposed legislation is based partly on the NAIC model, as well as the language proposed by the NCIGF. OFIS staff has been working on this legislation for a period of time with the MPCGA; all issues appear to have been resolved.

ADMINISTRATIVE RULES IMPACT

The OFIS has general rulemaking authority under the Insurance Code of 1956, 1956 PA 218.



Linda A. Watters
Commissioner

11-1-05

Date